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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/648-652/05, C/655-660/05, C/692 & 713/05 Date 24/07/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
PRAVEEN SHARMA
4/1406, GALI NIO 2, SHALIMAR PARK ,
SHAHDRA DELHI

PRAVEEN SHARMA Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/300-312/ 2009 CU[DB]** dated 23.07.09

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent

C.C. (ICD) NEW DELHI

TUGHLAKABAD, NEW DELHI 110 020.

2. Adv. / Consult

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4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
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20 JITENDER KUMAR CHATWAL
29/22,WEST PATEL NAGAR,NEW DELHI

21 CLASSIC GROUP OF INDS.
186, CIVIL LINES, JALANDHAR

22 ASHOK KUMAR
71, PARTAP NAGAR, JALANDHAR

23 ASHWANI KUMAR SAPRA
186, CIVIL LINES, JALSNDHAR

24 NEELAM CHABRA
BASTI SHEIKH JALANDHAR, PUNJAB.

25 M/S B.R.ENTERPRISES, JALANDHAR
278, GURU AMAR DAS NAGAR,
G.T.ROAD, JALLANDHAR

26 OM PRAKASH JAIN
H. NO 275, LAJPA NAGAR,PUNJAB

27 YUDHVIR SINGH
186, CIVIL LINES, JALSNDHAR

28 AMBAY TRADING CO.
186,CIVIL LINES, JALSNDHAR

29 MR. PIYUSH KUMAR, ADV.
B-25, LAJPAT NAGAR-II, N.D. – 24.

30 SH. NAVEEN MALHOTRA, ADV.
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31 JAGMOHAN BANSAL, ADV.
1640/I, SECTOR-40B, CHANDIGARH.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

C/648-652/05, C/655-660/05, C/692 & C/713/05

(Arising out of Order-in-Original No.31/2005 dt.13.4.05 passed by Commissioner of Customs, New Delhi)

Shri Praveen Sharma
Shri Deepak Sharma
Shri Gaurav Gupta
Shri Jitender Kumar Chatwal
Shri Om Prakash Jain
M/s. Classic Group of Inds.
M/s. Ambey Trading Co.
Shri Ashok Kumar
Prop. Yudhvir Singh Walia
Shri Ashwani Sapra
Ms. Neelam Chhabra
M/s. B.R. Enterprises
Sh. Jai Singh — Appellant

Versus

CC, New Delhi — Respondent

Appearance
S/Sh. Navin Malhotra, Piyush Kumar,J.M.Bansal, Advs. For Appellant

Sh. Vijay Kumar, Authorised Departmental Representative(DR) for Respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final

Date of hearing: 8.5.09
Order No. C/300 – 312/09
Date of pronouncement : 23/07/2009.

Per Rakesh Kumar:

The facts of this case, in brief, leading to these appeals are as under:

1.1 On receipt of specific information that various exporters based in Punjab and Delhi were attempting to export Hand Tools by grossly mis-declaring the quantity and value in order to avail higher DEPB or draw back benefit, the export consignments of M/s. Ambey Trading Co., Jallandhar(herein referred to as M/s. Ambey) with Shri Yudhvir Singh Walia as proprietor; M/s. Classic Group of Inds., Jallandhar(herein referred to as M/s. Classic) with Ms. Neelam Chabra, Shri Ashwani Sapra and Shri Yudhvir Singh Walia as partners, M/s. Geetika Enterprises, Jallandhar(herein referred as M/s. Geetika) with Sh. Rohit Batra as proprietor, M/s. Sandeep Exports(herein referred to as M/s. Sandeep) with Smt. Rajinder Kaur Randhawa as proprietor and M/s. B.R.Enterprises, Jalandhar(herein referred to as M/s. B.R.) with Shri Bakshi Ram as proprietor, lying in various godowns of Central Warehousing Corpn. at ICD, Patparganj, Delhi, were examined on 28.9.02. All these consignments were of Hand Tools and had been brought inside the customs area before the filing of shipping bills on the basis of carting orders issued by the concerned Dy. Commissioner(Customs). On 28.9.02, the shipping bills were found to have been filed only in respect of the consignments of M/s. Classic, M/s. Ambey and M/s. Sandeep. On examination of the export consignments, which were awaiting customs clearance, in all the cases, the quantity and value of the goods was found to be much less than that mentioned in the respective invoices and packing lists, on the basis of which the carting order for bringing the goods inside the customs area had been issued. In some cases even the description of the goods was different. All these exports were under DEPB or draw back claim. In case of M/s. Ambey and M/s. Classic, while the quantity and value actually found was much less than the quantity and value mentioned in the invoices on the basis of which the carting permission had been granted, the same (i.e. the quantity actually found)matched with the quantity and value mentioned in the shipping bill No.1253244 dt.20.9.02 and 1252764 dt.18.9.02 and it was also found that at the time of filing the shipping bills, a parallel set of invoices had been enclosed wherein the quantity mentioned matched with the quantity actually found. Since the carting orders, on the basis of different set of invoices showing much higher quantity and value, had been obtained by M/s. Ambey and M/s. Classic on 13.9.02 and on the basis of such carting orders, the goods had been brought inside the customs area, it appeared that they had got alerted and for this reason, to cover up their attempt to claim higher draw back/DEPB by mis-declaring the quantity and value in respect of export consignments, they filed the shipping bills alongwith parallel set of invoices mentioning the correct quantity and value.

1.2 In case of M/s. B.R and M/s. Geetika, though the export consignments had been brought inside the Customs area against carting orders dated 4.9.02 and 6.9.02 respectively, till 28.9.02, the date of surprise check, no shipping bill had been filed and the quantity of the goods actually found was much less than the quantity mentioned in the invoices and the packing lists, on the basis of which the carting orders had been issued. As regards M/s. Sandeep, it was found that they had already filed shipping bill No.5214-5222 each dt.6.9.02 and on examination, the quantity actually found was much less than the quantity menionted in the shipping bill and the invoices.

1.3 In view of misdeclaration of quantity and value, the above mentioned export consignments of M/s. Ambey, M/s. Classic, M/s. Geetika, M/s. Sandeep and M/s. B.R. were placed under seizure.

1.4 Enquiry was made with the partners/proprietors of the exporter firms and also with the CHA and other persons handling these consignments. On enquiry, it appeared that the proprietors/partners of the above mentioned exporter firms, in connivance with Sh. Jai Singh, Sh. Ashok Kumar, Shri O.P.Jain, Sh. Jitender Kumar Chatwal, Shri Gaurav Gupta, Sh. Praveen Sharma and Sh. Deepak Sharma were exporting hand tools by grossly inflating the value of the goods so as to claim higher draw-back/DEPB benefit. Initially the goods alongwith invoices and packing lists used to be brought inside the Customs area by obtaining the carting orders from Dy. Commissioner(Customs), but thereafter the shipping bills were being filed and by forging signatures of the various customs officers and putting false seals, clearance of the export consignments out of custom charge were being arranged without any customs examination. It was found that since this type of fraud would be difficult if the shipping bills are filed through EDI, the shipping bills were being filed manually.

1.5 Since the export consignments of M/s. Ambey, M/s. Classic, M/s. Geetika, M/s. Sandeep and M/s. BR had been placed under seizure in Sept.,2002 and SCN could not be issued for confiscation of the seized goods within the period stipulated in Section 110(2) of the Customs Act,1962, in accordance with the provisions of Section 110(2) a show cause notice dt.21.3.03 was issued for extending the period for issue of the SCN. The Commissioner vide five orders dt.24.4.03, 25.4.03, 25.4.03, 24.4.03 and 25.4.03 issued under Section 110(2) extended the period of issue of SCN in respect of each of the five export consignments under seizure by six months.

1.6 On completion of investigation, a SCN dt.24.9.03 was issued to the above mentioned persons for confiscation under Section 113(d) & (i) of the seized goods, which were found to be grossly misdeclared and also for imposition of penalty on the persons mentioned above under 114 of the Customs Act. M/s. Ambey, M/s. Classic, M/s. Geetika, M/s. Sandeep & M/s. BR had filed appeals to CESTAT against Commissioner's orders issued under Section 110(2) for extension of time for issue of SCN. The Tribunal, vide Final Order No.A/1497-1500/03-NB(SM) dt.10.11.03 ordered release of the seized goods.

1.7 The Commissioner of Customs, ICD, Tughlakabad vide order-in-original No.31/05 dt.13.4.05 upholding the above mentioned allegations against the noticees held the goods liable for confiscation under Section 113 of the Customs Act,1962 but the goods were ordered to be released in terms of Tribunal's order No.A/1497-1500/03-NB(SM) dt.10.11.03. However, penalty was imposed under Section 114(iii) on M/s. Classic, M/s. Ambey, M/s. Sandeep, M/s. Geetika & M/s. BR. Besides this, penalty under Section 114(iii) was also imposed on Sh. Yudhvir Singh, Ms. Neelam Chhabra, Sh. Ashwani Sapra, Sh. O.P.Jain, Sh. Praveen Sharma, Sh. Gaurav Gupta, Sh. Deepak Sharma, Sh. Ashok Kumar, Sh. Jai Singh and Sh. Jitendra Kumar Chatwal Out of the above mentioned persons except M/s. Geetika and M/s. Sandeep, all other noticees have filed appeals against this order.

2. Heard both sides.

2.1 Shri Jag Mohan Bansal, Advocate, the Learned Counsel representing M/s. Classic, M/s. B.R., M/s. Ambey, Sh. Yudhvir Singh Walia, Ms. Neelam Chhabra, Sh. Ashwani Sapra and Sh. Jai Singh made the following submissions:

(1) Penalty has been imposed under Section 114(iii) alleging violation of Section 113(i) of the Customs Act. In case of M/s. Classic and M/s. Ambey, shipping bills had been filed in which correct quantity and description had been declared and, therefore, there was no misdeclaration. In case of M/s. BR, even shipping bill had not been filed and as such there was no declaration. When there is no declaration made, there is no question of misdeclaration and no question of confiscation under Section 113 and penalty under Section 114. This contention is supported by the Tribunal's judgments in cases of –

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(a) Kabul Textile vs CCE
2004(174)ELT.470

(b) Jacson Tavera vs Collector of Customs
1987(27)ELT.121

(c) Dynacast Industries vs Collector of Customs
1991(113)ELT.524

(2) The penalty under Section 114(iii) could be imposed only if the goods had been exported under drawback scheme. In case of M/s. BR, shipping bills had not been filed and in the two cases – i.e. M/s. Classic and M/s. Ambey, the shipping bills were under DEPB, not under draw-back. Hence Section 114(iii) is not attracted.

(3) Hon'ble Supreme Court in case of RIB Tapes(India) Pvt. Ltd. vs UOI – 1986(26)ELT.193 has held that difference in value could not be said to be "difference in material particulars" within the meaning of the language of Section 111(m) of Customs Act,1962. In this case, during the relevant period i.e. during Sept.,2002, the word "value' was not there in Section 113(i) and it was inserted w.e.f. 14.5.03 only. So, on the ground of mis-declaration of value, Section 113(i) cannot be invoked.

2.1.1. Shri Piyush Kumar, Advocate, representing Shri Praveen Sharma and Shri Deepak Sharma made the following submissions:

(1) The allegation against Shri Praveen Sharma, a G-card holder of M/s. Lohia Travel & Cargo, a CHA and Shri Deepak Sharma is that they, in connivance with M/s. Ambey and M/s. Classic, filed invoices and packing lists showing inflated quantity

and value of the export consignment, to avail undue export benefit under DEPB scheme and that on noticing that customs were keeping a watch on their export consignments, they in order to cover up their attempted export by mis-declaration, filed shipping bills No.1253244 dt.20.9.02 and 1252764 dt.18.9.02 with revised invoices showing correct quantity and value. It is true that while carting the consignments of M/s. Ambey & M/s. Classic in the customs area of ICD, Patparganj, the exporters brought the same on the basis of documents showing excess weight and value, but when the entry for the purpose of export under Section 50 was made and the shipping bills were filed, all the particulars had been correctly declared in the shipping bills and the revised invoices enclosed with the shipping bills were showing correct quantity and value. In view of this, there was no mis-declaration and the provisions of Section 113(i) and 114 of the Customs Act are not attracted.

(2) The fact that weight and value were incorrectly mentioned in the invoices and packing lists used for carting of subject consignments does not amount to misdeclaration so as to attract the provisions of Section 113 & 114 of the Customs Act.

(3) Since the consignments being exported by M/s. Ambey and M/s. Classic were under DEPB claim, not under drawback claim, and since the provisions of Section 114(iii) are applicable only in case of misdeclaration in respect of goods attempted to be exported under drawback claim, this section is not applicable.

(4) Shri Praveen Kumar and Shri Deepak Kumar are not associated with the goods of M/s. BR.

(5) Misdeclaration in the invoices and packing list on which carting of the goods was allowed does not amount to "attempt to export the goods improperly".

(6) The judgment of Hon'ble Supreme Court in the case of State vs Mohd. Yakub & Others reported in 1983(13)ELT.1637-SC relied upon by the Department does not help the Deptt's case. In this regard, the Appellant rely on the Tribunal's judgment in the case of Devdas Adhikari and Dinabandhu Adhikary reported in 2008(222)ELT.299.

2.1.2 Shri Naveen Malhotra, Advocate, the Ld. Counsel representing Shri Om Prakash Jain, Shri Gaurav Gupta and Shri Jitender Kumar Chatwa, repeating the submissions made on behalf of other Appellants, emphasized that there was no misdeclaration and hence the provisions of Section 113(i) and 114(iii) are not applicable.

2.2 Shri Vijay Kumar, the learned Departmental Representative emphasizing that in all these cases, the goods had been brought into the customs area on the basis of invoices and packing lists, wherein the quantity and value of the goods had been grossly inflated, only with intention to export the same by misdeclaring the quantity and value, in order to claim higher - DEPB/Draw back, made the following submissions.

(1) The details regarding the weight and value of the goods in invoices and packing lists on the basis of which the entry of the

goods for exports was allowed by the Customs authorities, were misdeclared. In the case of M/s. B.R. Enterprises, the description of goods as declared was "Cobalt Bearing Tools Bit", while the goods were found to be "Ring Spanner Set without Cobalt, a much cheaper item.

(2) The Appellants admitted in their statements during investigation that the details regarding the weight and value of the goods in invoice and packing list on the basis of which the entry of the goods for exports was allowed by the Customs authorities, had been misdeclared and only subsequently the correct set of documents was submitted.

(3) As required under the Shipping Bill Regulations,1991, invoice and packing list are the documents to be submitted along with the Shipping Bill. In this case the Customs authorities allowed the entry of the goods meant for export inside the Customs area by endorsement "carting allowed on invoices". The invoices contained declaration "Under Shipment DEPB Scheme"or "under shipment DBK Scheme". Once the goods entered the Customs area, the exporters could not take the same back unless permission to take cargo back is granted by the appropriate authorities. After entry in the Customs area, the exporters are required to file Shipping Bill and the goods are examined on random selection basis and if no variance between the declared description, quantity and value and actual description, quantity and value is found, the shipment is allowed. In this case, the misdeclaration was detected after the goods entered into the

Customs area. This is clearly a case of attempt to export the goods improperly. Hon'ble Supreme Court in the case of State vs Mohd. Yakub & Others reported in 1983(13)ELT.1637(SC) has held that a person commits the offence of "attempt to commit a particular offence" when (i) he intends to commit that particular offence and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence. Hon'ble Supreme Court in para 15 of this judgment observed that the provisions of Section 113 of Customs Act must be construed in manner which would suppress the mischief, promote their object and prevent their subtle evasion and foil their artful circumvention and thus construed the expression "attempt" within the meaning of these penal provisions, is vide enough to take in its fold any one or series of acts committed, beyond the stage of preparation in moving the contraband goods deliberately to the place of embarakation, such act or acts being reasonably proximate to the completion of the unlawful export. The ratio of this judgement of the Hon'ble Supreme Court is squarely applicable to the facts of this case.

(4) In this case the misdeclaration was done by five different firms but the CHA is common in all the cases. The adjudicating authority in para 77(f) of the impugned order-in-original has given clear findings that the CHA and their persons

In earlier similar exports, had forged signature of Customs officers and affixed the forged stamps of the Customs officers on export documents. Therefore, this case is nothing but attempt to export by grossly misdeclaring the quantity and value of the goods in order to claim high DEPB benefit and hence the provisions of Section 113 & 114 are attracted.

3. We have carefully considered the submissions from both the sides and perused the records. Out of the five exporters involved in this case, only three – M/s. Ambey, M/s. Classic and M/s. BR have filed appeal against the impugned order alongwith their partners/proprietor. The other two exporters – M/s. Geetika and M/s. Sandeep have not come in appeal. In all these cases, the export consignments which were to be exported under DEPB claim or drawback claim had been brought on the basis of carting orders issued by the Dy. Commissioner much before the filing of the Shipping Bill and there is no dispute about the fact that the invoices and the packing lists presented to the Customs at the time of obtaining carting order mentioned much inflated quantity and value of the goods and in some cases, description of the goods was also different. The consignments of M/s. Classic, M/s. Ambey and M/s. BR along with those of M/s.Geetika and M/s. Sandeep were checked on 28.9.02 but by that time, M/s. Classic and M/s. Ambey had filed the Shipping Bills under DEPB scheme mentioning the correct quantity, description and value and the invoices enclosed with the Bill of Entry, though bearing the same number as the invoice number mentioned on the invoice

presented at the time of obtaining carting orders, were having correct quantity, description and value. In the case of BR, no shipping bill has been filed. The main point of dispute in this case is as to whether the exporters have misdeclared the description, quantity and value of the goods being exported and thereby attracting the provisions of Section 113 and 114 of the Customs Act,1962. The plea of the appellants is that since in case of M/s. Classic and M/s. Ambey, the quantity and value of the goods, as mentioned in the shipping bills matched the actual quantity and value though it differs widely from the quantity and value, as mentioned in the invoices presented at the time of obtaining carting order and since in case of M/s. BR, no shipping bill had been filed, there is no misdeclaration.

4. From the circumstances in which the shipping bills and the revised invoices mentioning correct quantity, description and value of the goods has been filed by M/s. Ambey and M/s. Classic, it is clear that the same have been filed to cover up their attempt of misdeclaration as the exporters obviously had got alerted. There is no explanation as to why at the time of obtaining carting order, the invoices mentioning much higher quantity and value had been presented. Moreover, we also find that in case of M/s. Ambey while the consignee in the invoice presented at the time of obtaining carting order was M/s. Wispville Ltd., 299-303, Battersea Part Road, London SW 114 LX, in the invoice bearing the same number filed alongwith the Shipping Bill the consignee's name is M/s. BON Hardware Trading EST, P.O.Box No.27196,

Sharjah, UAE. In view of this, no ~~cognigance~~ cognizance can be taken of the Shipping Bills filed by M/s. Classic and M/s. Ambey. The question now arises as to whether on the basis of huge difference between the quantity and value as mentioned in the invoice and packing list originally presented to the Customs while obtaining carting orders and the quantity, value and description as actually found during examination, it can be said as to whether the goods were being attempted to be exported by misdeclaring the quantity, description and value and thereby attracting the provisions of Section 113 & 114 of the Customs Act,1962. In this regard, we find that Shri Jitender Kumar Chatwal, an associate of Shri Jai Singh, through whom these consignments were to be cleared, in his statements dt.30.10.02 and 31.10.02 has stated that the actual intention of bringing the goods prior to the filing of shipping bills, under the cover of invoices/packing lists mentioning highly inflated the quantity and value, was to subsequently file the Shipping Bill on the basis of such invoices and get the goods cleared without Customs examination by forging the signature of the Customs Officers on the Shipping Bill and putting fake stamp; that Shipping Bills used to be filed manually instead of EDI because it was easier in manual Shipping Bills to manupilate the weight and value; and that in order to ensure manual filing of shipping bill, they used to include atleast one item on which both the drawback and DFRC benefits were available, because they were aware that Shipping Bills in respect of DFRC item could not be filed in EDI system. The statement of

Shri Jitender Kumar Chatwal is corroborated by the statement of Shri Gaurav Gupta and statements dt.29.10.02, 30.10.02 and 31.10.02 of Sh. Jai Singh. Sh. Jai Singh in above mentioned three statements explaining the role played by his other accomplishes S/Sh. Jitender Kumar Chatwal, Gaurav Gupta, Om Prakash Jain, Ashok Kumar, Praveen Kumar and Deepak Kumar, has explained in detail as to how the fraud of obtaining higher drawback/DEPB benefit was being committed in export of hand tools by grossly inflating the quantity and value of the goods and also some times misdeclaring the description. Shri Jai Singh in his statement dt.31.10.02 has stated that Sh. Jitender Kumar Chatwal, Gaurav Gupta and Deepak Sharma used to forge signatures of the Customs Officers and affixed the four Customs seal and that he used to get ~~at~~ Rs.one lakh per container for clearance of the export cargo in this manner. We also find that excess remittance (as the declared weight and value of the goods was heavily inflated) was being arranged to the exporters through hawala channel. This is clear from the statement dt.11.11.02 of Shri D.K.Singhal discussed in para 51 of the SCN. In this regard, para 51 of the SCN is reproduced below:

> "51. Whereas Shri D.K.Singhal s/o Shri P.D.Singhal resident of 14/58, C.H.B. Jodhpur appeared before the Superintendent(SIIB) on 11.11.02 as an authorized representative of Shri S.K.Pitti, Proprietor of M/s. Jindal International, Nagore. The department had issued summons to Shri S.K.Pitti. Shri D.K.Singhal informed that he is the nephew(maternal) of Shri S.K.Pitti and as mother of Shri S.K.Pitti was critically ill, therefore he (S.K.Pitti) authorized him, in writing, to appear before the Superintendent and tender his voluntary statement. The authorization letter brought by Shri D.K.Singhal was

taken on record. In his statement dt.11.11.02 recorded under Section 108 of the Customs Act,1962, Shri D.K.Singhal, interalia, stated as an authorized representative of M/s. Jindal International, Nagore and Shri S.K.Pitti, proprietor of M/s. Jindal International; that M/s. Jindal International was established in the year 1966; that he was looking after the work of M/s. Jindal International from 1997 to 2002; that from Dec,2000 to Jan,2002 he also worked in M/s. Nibras Al Shj Steel & Building Material Trading Est. P.O.2573, Sharjah as shop incharge; that M/s. Jindal International are engaged in manufacture of various types of Pliers which they get manufactured with the help local job workers; that M/s. Jindal International supplies their goods to various firms who in turn usually export the same; that he used to frequently came to India during the period (Dec.,2000 to Jan,2002) when he was employed with M/s. Nibras Al Shj Steel & Building Material, Sharjah and used to help his uncle Shri S.K.Pitti in his business; that in the course of trading he came in contact with Shri Ashok Kumar alias Lucky, Shri Gurinder Singh proprietor of M/s. H.S.overseas and M/s. Millennium Exports, Shri O.P.Jain, proprietor of M/s. Jaina International, Shri S.K.Chopra, proprietor of M/s. Laxmi Steel Forgings and Shri Jai Singh, CHA; that he knew even before he left to Sarjah that said Shri O.P.Jain, Sh. Ashok Kumar, Shri Gurinder Singh and Shri S.K.Chopra have been indulging in fraud and irregularities to get the excess Export Incentives in export of tools; that during his employment with M/s. Nibras Al Shj Steel & Building Material, Sharjah (Dec.,2000 to Jan.,2002) he handled the imports made by M/s. Nibras from the firms situated at Jallandhar and belonging to Shri O.P.Jain, Shri Ashok Kumar, Shri Gurinder Singh and Shri S.K.Chopra; that he provided the names of the firms which according to him are controlled and managed by above mentioned persons (names of the firms available on page 9 of the statement); that in answer to a question that how he know that said persons are engaged in fraudulent exports of Hand tools he replied that he was in the business of Hand Tools in Jallandhar from 1995 and in course of this business he came to know that said persons were engaged in fraudulent exports of misdeclaring the description and weight and value of the Hand Tools; that said Shri O.P.Jain, Shri Ashok Kumar, Shri Gurinder Singh and Shri S.K.Chopra etc. used to call him when he was at Sharjah before the export of their consignment in the name of various firms from Delhi; that they used to tell him that in which firms name they would be sending the consignment and what would be the actual weight and value and what would be declared in the shipping documents; that the actual weight of the consignment of Hand Tools of the said firms used to be about ten times less than the declared weight and the value and description were also misdeclared; that due to this misdeclaration they used to avail ten times more DEPB benefits; that M/s. Nibras at Dubai used to receive two sets of shipping documents - one through the bank which was according to the declared weight and value (usually ten times more than the actual) and the other one directly from the Indian supplier which showed the actual weight and value; that M/s. Nibras used to submit the invoice and documents like Packing List etc. showing the actual quantity and value of the goods to the Dubai customs and not the other one received through the Bank; that the excess remittances as per declared weight and value used to be arranged through Hawala channels to enable the Indian exporters to claim excess export benefits; that M/s. Nibras, Sharjah never used to submit the invoice showing the declared value etc. received through exporters in India to Dubai Customs as due to ten times more value the importer would have been required to pay ten times more duties so that importers i.e. M/s. Nibras, Sharjah either used to submit the other copy of the invoice received through such exporters showing actual value or some times M/s. Nibras, Sharjah themselves used to prepare such invoices; that there are sufficient proof/evidences with the Dubai Customs of the fraud committed by said Shri O.P.Jain, Shri Ashok Kumar, Shri Gurinder Singh and Shri S.K.Chopra and which can be obtained by overseas inquiries; that Shri O.P.Jain influenced his uncle Shri S.K.Pitti to send export consignment of Hand Tools in his firms name to Dubai; that Shri O.P.Jain told him that the tools would be manufactured in his firm M/s. Jain International and he (O.P.Jain) would sent the consignment directly to Shri Jai Singh at Delhi who would prepare invoice etc. in his (Shri S.K.Pitti's) firms name and export the consignment to M/s. Nibras, Sharjah; that the Hawala transactions relating to the said consignments would also be managed by him (O.P.Jain), that Shri O.P.Jain promised his uncle that after deduction of all expenses etc. he (O.P.Jain) would pay 50% profits to his uncle; that on going through the Shipping Bill Nos.2797 dt.6.5.02, 2798, 2797, 2800, 2804, 2805, 2806 and 2807 all dt.6.5.02 filed in the name of M/s. Jindal International he stated that in all these shipping bills the quantity declared in three times of the actual; that similarly value is also three times more than the actual; that on examining the shipping bills he stated that on none of these anybody from M/s. Jindal International and its authorized signatory had signed the same; that somebody at Shri Jai Singh's office must had signed the same".

The facts disclosed by Shri D.K.Singhal have not been rebuted by the Appellants.

5. The statements of Sh. Jai Singh, sh. Jintender Kumar Chatwal, Sh. Gaurav Gupta, Sh. Deepak Sharma and Shri D.K.Singhal have not been retracted by them and thus are admissible as evidence. It is, thus, clear that the bringing of the goods in Customs area much before filing of the shipping bills, under the cover of invoice by grossly inflating the quantity and value was not an innocent act but was a first step towards their plan of fraudulently clearing the goods out of Customs charge by forging the signatures of the Customs Officers on the Shipping Bill filed later and affixing the fake Customs seal and this was being done to defraud the ex-chequer by claiming much higher DEPB or drawback benefit. In view of this we hold that the judgment of Hon'ble Supreme Court in the case of State vs Mohd. Yakub & Others reported in 1983(13)ELT.1637(SC) is applicable to the facts of this case and the action of M/s. Ambey, M/s. Classic and M/s. BR has to be treated as attempt to export by misdeclaring the quantity, description and value of the goods and then export in contravention of the prohibitions imposed under Section 11 of Customs Act,1962(Hon'ble Supreme Court judgment in the case of Om Prakash Bhatia vs CCE reported in 2003(155)ELT.423(SC),

attracting the provisions of Section 113(d) and 114(i). We, therefore, hold that the provisions of Section 113 and 114 of Customs Act,1962 are attracted to this case and the goods have been rightly confiscated and penalties have been rightly imposed on the Appellants. In view of this, we do not find any infirmity in the impugned order. The appeals are dismissed.

(Pronounced on.......23/7/09.........).

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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